

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 14/2006

M/s. Zuari Industries Ltd. Co.,
A Company incorporated under the
Companies Act, 1956 and having its
Registered office at Jai Kissan Bhavan,
Zuari Nagar, Goa
through its Company Secretary.

..... Petitioner.

V/s.

1. Comunidade of Sancoale through its
Attorney Shri Alvaro Colaco with office at
Sancoale, P.O. Cortalim, Goa.

2. M/s. Zuari India Oil Tanking Co. Ltd.,
a Company incorporated under Companies
Act, 1956 and having its registered office
At Jai Kissan Bhavan,
Zuari Nagar, Goa
Through its Company Secretary,

3. Birla Institute of Technology and Science
A company incorporated under Companies
Act, 1956 and having its registered office
at Pilani and Branch Office
at Zuari Nagar, Sancoale, Goa

4. Smt. Maria Mafalda da Costa e Sa
wife of late Francisco de Sa,
major, age about 45 years,
resident of Zorint, Sancoale, Goa.

5. Smt. Eufemia Salvacao de Sa e Gama,
major, age about 45 years,
resident of Zorint, Sancoale, Goa
and her husband,

6. Shri Custodio Gama,
major, age about 47 years,
resident of Zorint, Sancoale, Goa.

7. Shri Pedro Baltazar de Sa,

major, son of late Francisco de Sa,
resident of Zorint,
Sancoale, Goa.

8. Smt. Antonia Pereira e de Sa,
major, daughter of Joao Manuel
Pereira, resident of Zorint,
Sancoale, Goa.

9. Smt. Rosa Maria Angelica de Sa,
major, daughter of late Martin de Sa,
resident of Zorint, Sancoale, Goa.

10. Shri Paulo Mascarenhas,
major, son of late Aleixo Mascarenhas,
resident of Zorint, Sancoale, Goa.

11. Smt. Conceicao de Sa e Fernandes,
major, daughter of late Martin De Sa,
residing at Quelossim,
Cortalim, Goa and her husband,

12. Shri Sebastiao Fernandes,
major, son of late Paulo Fernandes,
residing at Quelossim, Cortalim, Goa

13. Shri Joao Piedade de Sa,
major, son of late Martin de Sa,
resident of Zorint, Sancoale, Goa,
and his wife,

14. Smt. Cecilia Sebastiana Gama e
De Sa, major, daughter of Manuel Gama,
Resident of Zorint, Sancoale, Goa.

15. Shri Luis de Sa,
major, son of late Martin De Sa,
resident of Zorint, Sancoale, Goa.

16. Smt. Maria Cleta Gama e de Sa,
major, daughter of Joaquim Inacio Gama,
resident of Zorint, Sancoale, Goa.

17. The Administrator of Comunidade,
South Zone, with Office
At Margao, Goa.

..... Respondents.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. I. Agha, Advocate for the petitioner.

Mr. A. N. S. Nadkarni and Mr. H. D. Naik, Advocates for the respondents.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : SEPTEMBER 6, 2006.

ORAL JUDGMENT :

Heard. By the present revision application, the petitioner challenges the order dated 20th March, 2006, passed by the trial Court, rejecting the application under Order VII, Rule 11(a) of C.P.C.

2. The application by the petitioner was for rejection of the plaint on the ground that it does not disclose the cause of action.

3. Placing reliance in the decisions in the matter of ***I.T.C. Limited vs. Debts Recovery Appellate Tribunal and ors.***, reported in (1998) 2 SCC 70 and ***T. Arivandandam vs. T.V. Satyapal and anr.***, (1977) 4 SCC 467 and drawing attention to the various provisions of the Code of Comunidades (“the said Code” for short) which is in force in the State of Goa, the learned Senior Counsel appearing for the petitioner submitted that the trial Court erred in dismissing the application for rejection of the plaint in spite of the fact that proper reading of the plaint would reveal that it fails

to disclose real cause of action for filing the suit. According to the learned Senior Counsel, the suit has been filed for alleged forfeiture of leasehold rights and for recovery of possession of the property on the assumption that the possession of the property in question, was delivered to the petitioner as the lessee thereof when, in fact, the document annexed to the plaint discloses clear conveyance of ownership rights in terms of the provisions of the said Code and more particularly in terms of Article 324 thereof. Taking through the copy of the plaint and particularly paragraphs 9, 10 and 17 thereof, it was submitted that the averments made therein, read with the copy of the Deed dated 31.3.1971 filed along with the plaint, apparently disclose that the property was granted in terms of Article 324 of the said Code and, therefore, there is no case of any leasehold rights being created in favour of the petitioner by the Comunidade and, hence, the plaint does not disclose any cause of action for the purpose of the reliefs prayed for. In the circumstances, applying the law laid down by the Apex Court, the trial Court ought to have rejected the plaint.

4. The learned Counsel appearing on behalf the respondents, on the other hand, placing reliance in the decision of the Apex Court in the matters of **Sopan Sukhdeo Sable and ors. Vs. Assistant Charity Commissioner, and ors.**, reported in (2004) SCC 137 and **Mayar (H.K.) Ltd. & Ors. Vs. Owners and Parties**,

Vessel M.V. Fortune Express & Ors., reported in 2006 AIR SCW 863, submitted that the plaint on the face of it, clearly discloses the cause of action and, therefore, no fault can be found with the impugned order rejecting the application under Order VII, Rule 11 of C.P.C. He further submitted that the plaint clearly discloses the necessary facts which could reveal the cause of action for the reliefs asked for and in that regard the attention was sought to be drawn to the paragraphs 9, 10, 13, 1, 17, 18, 19 and 21 of the plaint.

5. A perusal of the impugned order discloses that the trial Court dismissed the plea for rejection of the plaint only in relations to the grievance made about the absence of disclosure of cause of action. In the course of arguments before this Court, the learned Senior Counsel has submitted that the plaint was also liable to be rejected on the ground of bar of limitation as it apparently discloses that the suit has been filed on expiry of the period of limitation after the date of cause of action had arisen. Undisputedly, the said point has not been dealt with by the trial Court, nor it appears to have been raised in the application which was filed under Order VII, Rule 11 of C.P.C. though some reference was made to the said point in the course of arguments before the trial Court. As regards the bar of limitation and the claim for rejection of the plaint on the ground, since the said issue has not been dealt with by the trial Court, it will be premature for this Court to deal with the same or interfere with

the impugned order on the said ground in revisional jurisdiction. In the circumstances, the parties are required to invite adjudication of the said issue, if they so desire, before the trial Court in accordance with the provisions of law before raising the said point in this Court.

6. As regards the point regarding absence of cause of action, the trial Court in its order has clearly observed that “It is the case of the plaintiff that the properties were leased to the defendants and claimed forfeiture of the said lease. The necessary averments have been made in the pleadings.” Having so observed, the trial Court then proceeded to consider the point which was required to be decided i.e. whether the plaint disclosed the cause of action and, not whether there is any cause of action for filing of the suit. Indeed, the trial Court formulated the said question and answered the same in affirmative on analysis of the plaint. It cannot be disputed that while dealing with the matter under Order VII, Rule 11 of C.P.C., the Court has to consider whether the plaint discloses real cause of action or not, and for that purpose one has to read properly the plaint. In the case in hand, the trial Court, on proper reading of the plaint has arrived at a finding that the plea of the respondent-plaintiff in the plaint is that the properties were leased to the petitioner-defendant and the relief is claimed on the basis of the forfeiture of leasehold rights. The plaint certainly discloses the pleadings relating to creation of leasehold rights in favour of the

petitioner by the respondent-Comunidade in relation to the property in question. The observations of the trial Court in relation to the case pleaded in the plaint cannot be found fault with. Being so, it cannot be said that there is any jurisdictional error committed by the trial Court while dealing with the matter under Order VII, Rule 11 C.P.C. which would require interference in exercise of powers under Section 115 of C.P.C.

7. Indeed, proper reading of the plaint would disclose that it contains specific averments about the decision of the Comunidade to the effect that it had resolved to grant perpetual lease of the plots of the Comunidade to the petitioner. The plaint also discloses that the resolution included the conditions on which the lease was sought to be granted. It also discloses the averments to the effect that such a lease was duly approved by the Government and the lease agreement was executed on 1.2.1969 in favour of the petitioner. The plaint further discloses that the Administrator of the Comunidade had executed a Deed of Conveyance on 31.3.1971. However, the same was without any authority and the Comunidade had never decided to sell the properties in favour of the petitioner and there was no decision taken by the plaintiff-Comunidade to sell the said properties. The possession of the property was given and was continued with the petitioner in its capacity as the lessee. It is further stated in the plaint that on account of an attempt on the

part of the petitioner to get the property mutated in favour of the third party, the acts of the Administrator contrary to the decision of the respondent-Comunidade were revealed to the plaintiff, on receipt of the notice from the Talathi and it gave rise to the cause of action for filing the suit and, accordingly, the suit has been filed. In the background of these facts alleged in the plaint, the case of the plaintiff-respondent is that the petitioner is the lease-holder in relation to the suit property and that there has been violation of the terms of lease and consequently forfeiture of lease and, therefore, the suit has been filed.

8. Undisputedly, it was sought to be contended on behalf the petitioner that the plaint specifically refers to have created a right in favour of the petitioner in the suit property in terms of the provisions of Article 324 of the said Code and that the said provision clearly speaks of creation of permanent right of enjoyment in favour of the grantee of the land and all the requirements to create such a right as contemplated under the said Code are found to have been complied with by the parties and the same is revealed from the Deed of Conveyance dated 31.3.1971 annexed to the plaint and, therefore, according to the petitioner the same is sufficient to reveal that there is no cause of action in favour of the respondent-plaintiff to seek the relief of the nature asked for in the plaint as on account of creation of the ownership rights assured under Article 324, the question of

Comunidade exercising the power of forfeiture of lease does not and cannot arise and for the same reason, there could not be any cause of action in the facts and circumstances disclosed from the plaint read with the said document. Referring to the decision of the Apex Court in ***I.T.C. Limited (supra)***, therefore, it was sought to be contended that the Court has to find out whether there is real cause of action being disclosed from the plaint and should not get illusioned by clever drafting of the pleadings and has to read the entire pleadings in the plaint and that having so read, the plaint in question, it does not disclose real cause of action.

9. As already stated above, the plaintiff apparently disputes the authority of the Administrator to execute the Deed dated 31.3.1971, while specifically contending that the Comunidade had resolved and had decided to grant the leasehold rights and not to sell the property in favour of the petitioner. It was sought to be contended that the rights being undisputedly created under Article 324 of the said Code, and the said Code was in Portuguese language, it was not properly translated in English and the real meaning of the said provision was not understood and on that count, the rights which are sought to be created were presumed to be of leasehold nature while proper reading and understanding the provisions comprised under Article 324 of the said Code would reveal that it created ownership right in favour of the grantee. Whether the rights

which have been created in favour of the petitioner consequent to either grant or whatever document that has been executed by the parties as a result of the decision of the Comunidade to create the right in favour of the petitioner, are of the nature claimed by the respondent/plaintiff or are of the nature claimed by the petitioner, is a point to be decided on merits and the same cannot be decided based on merely what is stated in the plaint or sought to be disputed by referring to the statutory provisions under the Code. Such an exercise is not permissible while dealing with the matter under Order VII, Rule 11 of C.P.C. The scope of inquiry under Order VII, Rule 11 is restricted to ascertain whether the plaint discloses cause of action or not, and not to ascertain whether the plaintiff would be entitled to get the relief asked for in the facts and circumstances disclosed in the plaint. Whether the plaintiff ultimately succeeds in establishing or fails to establish the plea in the plaint is totally a different issue.

10. The Apex Court in the ***Mayar (H.K.) Ltd. & Ors. (supra)***, after considering its earlier decision on the scope of inquiry under Order VII, Rule 11 held that “it is apparent that plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in the application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses cause of action and if it does, then the plaint cannot be rejected by the Court exercising the power under Order

VII, Rule 11 of the Code. Essentially whether the plaint discloses the cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

11. The learned Senior Counsel, however, referring to the decision of ***I.T.C. Limited (supra)***, submitted that the Apex Court therein while dealing with the similar issue and referring to the facts of ***I.T.C. Limited's*** case had ruled that the allegation of non-supply of goods was a matter between the seller and the buyer and did not by itself amount, in law, to a plea of “fraud” as understood in this branch of the law and hence, by merely characterizing alleged non-movement of goods as “fraud” the Bank could not have claimed that there was a cause of action based on fraud or misrepresentation, and further submitted that bearing in mind the said observations of the Apex Court while considering the plea about

absence of cause of action in the case in hand, the Court will have to consider not only the pleadings in the plaint, but will have to consider the provisions of law comprised under the said Code and on such consideration, it would reveal that the right which has been accrued in favour of the petitioner on account of grant of property is not in the nature of leasehold rights and, therefore, the entire cause of action alleged in the plaint is without any substance and, therefore, the same is to be held to be not disclosing the real cause of action. The decision in ***I.T.C. Limited's*** case was in relation to the grievance of fraud alleged to have been played by the defendant in the said suit. The Apex Court in ***Mayar's*** case (supra), has clearly observed, apart from the same being well settled principle of law, that "A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature." It is well settled that in order to establish the allegation of fraud, the pleadings should disclose the intention to cause loss to the other party by acts complained of and in that regard mere non-supply of goods, by itself cannot be said that any fraud was played by the supplier of the goods. Pleadings regarding non-supply of goods having resulted in fraud having been played by

the supplier were in a case where there was mere failure to supply the goods to the plaintiff and in that regard observations as quoted above, were made by the Apex Court in ***ITC Limited (Supra)***, those observations, by themselves, would not be of any help to the petitioner to contend that by considering the provisions of the said Code and by taking into consideration the plea which is sought to be raised by the petitioner in answer to the plaintiff's case in the plaint, that it would entitle the petitioner to non-suit the plaintiffs by taking resort to the provisions of law under Order VII, Rule 11 of C.P.C.

12. The Apex Court in ***T. Arivandandam's*** case (supra), which is sought to be relied upon on behalf of the petitioner had held that the trial Court must remember that if on a meaningful – not formal - reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. Undoubtedly, in the case in hand, the trial Court on perusal of the plaint has found the same to be on the basis that the property was leased to the petitioner and on account of failure to comply with the obligation of the lessee, the plaintiff has proceeded to exercise the right to forfeiture of lease and on that count has filed the suit. To what extent the plaintiff would succeed or fail in establishing its

case, would depend upon the evidence that would be led by the plaintiff. However, once on the face of the plaint a cause of action is disclosed, it cannot be interfered with in exercise of power under Order VII, Rule 11 C.P.C. Being so, **T. Arivandandam's** case is also of no help to the petitioner in seeking interference of this Court in exercise of powers under Section 115 of C.P.C.

13. It is made clear that the issue regarding bar of limitation and on that count powers of the Court to take appropriate decision under Order VII, Rule 11 of C.P.C. is kept open and this Court has not expressed any opinion in that regard.

14. For the reasons stated above, therefore, in the absence of any jurisdictional error being disclosed in the impugned order and the pleadings in the plaint disclosing the cause of action, I do not find any case having been made out for interference in the impugned order in revisional jurisdiction. Hence, the revision petition is dismissed.

R.M.S. KHANDEPARKAR, J.

SSM.